IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.704 OF 2005
IN
EXECUTION APPLICATION NO.452 OF 2004
IN
ARBITRATION REFERENCE NO.438 OF 2002

Puranmal Pasari. ..Applicant.

V/s.

M/s. Nikko Stock Brokers Pvt.Ltd...Respondents.

And

The Stock Exchange, Mumbai. ..Garnishee.

Mr.P.N.Mody with Sagar Divellant i/b Wadia Ghandy & Co. for Garnishee/org. applicant.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 22, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This chamber summons is filed by third party/garnishee, the Stock Exchange, Mumbai for revoking and/or cancelling and/or set aside the warrant of attachment dated 3rd December, 2004. The said warrant of attachment has been issued in execution proceedings in relation to the award passed in favour of the applicant on 29th October, 2002. The warrant of attachment refers to Schedule which

reads thus:

> 1. Fixed Deposit of Rs.80,00,000/- due and payable by Bombay Stock Exchange, Mumbai to the Respondents.
>
> 2. Securities Deposit of Rs.1,25,000/-, Office Deposit of Rs.2,50,000/-, VAST Deposit of Rs.3,00,000/-, Locker Deposit of Rs.10,000/- and Car Parking Deposit of Rs.1,50,000/- lying with and due and payable by Bombay Stock Exchange, Mumbai to the Respondents.
>
> 3. Securities and Deposit of Rs.3,33,33,829.29/- lying with Bombay Stock Exchange of the respondents in Defaulter Member Fund.
>
> To be attached to the extent of Rs.25,16,9992.83/- (Rupees twenty five lakhs sixteen thousand nine hundred ninety two and paise eighty three only).

3. Garnishee has filed affidavit and stated on oath that there is no fixed deposit in the sum of

Rs.80 Lakhs, due and payable by the Garnishee to the respondent as referred to in Item 1 of the Schedule. Similarly, there is no security in the sum of Rs.1,25,000/- or VAST deposit of Rs.3 Lakhs as referred to in Item 2 of the Schedule.

4. In so far as other deposits in Item 2 and 3 of the Schedule, referred to above, contention of the Garnishee is that those deposits even if available with the Garnishee, the same is not due and payable to the respondent, as the respondent has been declared defaulter by the Stock Exchange for outstanding dues of over Rs.19 Crores. That declaration has been made on 25th February, 2002. On such declaration being made, on account of Bye-law 326, all the security deposits and deposits of the respondent with the Garnishee have vested in the Defaulters' Committee. Bye-law 326 read thus :

"Defaulter's Assets

Bye-law 326. The Defaulters' Committee shall call in and realise the security and margin money and securities deposited by the defaulter and recover all monies, securities

> and other assets due, payable or deliverable to the defaulter by any other member in respect of any transaction or dealing made subject to the Rules, Bye-laws and Regulations of the Exchange and such assets shall vest in the Defaulters' Committee for the benefit and on account of the creditor members.
>
> Application of Defaulters' Assets and Other Amounts."

5. It is further stated by the Garnishee that besides, there is already attachment of Income tax department to the extent of Rs.2.21 Crores against the respondent whereas the assets of the respondent are only in the sum of Rs.3.62 Crores.

6. The short question before this court is: whether the deposits and/or securities with the stock exchange made by the respondent referred to in Item 2 and 3 of the Schedule are amenable to attachment, in law.

7. On reading of the Bye-law 326, stand taken by

Garnishee will have to be accepted. In other words, on the relevant date i.e. 25th February, 2002, respondent has been declared as defaulter, all the deposits, margin monies, securities lying with Garnishee have been realised and vested in Defaulters' Committee. That amount cannot be attached because the same is not payable to the respondent as such. In other words, warrant of attachment was got issued on the erroneous assumption that the said amount, which is now lying in the Defaulters' Committee is due and payable to the respondent by the Bombay Stock Exchange. If this is so, Garnishee has to succeed in the present application.

8. To get over this position, counsel for the respondent would contend that there is another account (Investor Protection Fund) available with the Bombay Stock Exchange, in which amount is ascribable to the respondent, which is available for payment to the respondent. That amount can be utilised to satisfy the amount under the award. However, it is not necessary to consider the said grievance for the simple reason that Garnishee has filed affidavit pointing out that Investors Protection Fund is managed by an independent registered Charitable

Trust. The Garnishee has no direct control over the decision of the said Trust. In any case, even if any amount belonging to the Respondent is lying in the Trust account that does not mean that it is payable to the Respondent by the Garnishee as such. Taking any view of the matter, there can be no attachment relating to the items referred to in the Schedule.

9. Be that as it may, that account is not subject matter of attachment before me. In fact, the grievance of the applicant is with regard to the disbursal of any amount from the said fund if available and could be disbursed to satisfy the decretal amount in the award. That grievance can be considered in the appropriate proceedings, as and when taken out by the applicant, if permissible in law. Those questions are left open. This chamber summons ought to succeed in terms of prayer clause (a).

8. Ordered accordingly. No orders as to costs.